

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,  
*et al.*,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO  
RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM  
OF THE GOVERNMENT OF THE  
COMMONWEALTH OF PUERTO RICO,

Debtor.

PROMESA

Title III

No. 17 BK 3566-LTS

**JOINDER OF THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF THE  
COMMONWEALTH OF PUERTO RICO TO ERS'S OPPOSITION TO THE PUERTO  
RICO FUNDS' MOTION CONDITIONING THE AUTOMATIC STAY  
ON THE CONTINUATION OF ERS BONDHOLDER PROTECTIONS**

<sup>1</sup> The Debtors in these jointly-administered PROMESA Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686).

The Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”) hereby submits this joinder to the *Opposition to the Puerto Rico Funds’ Motion Conditioning the Automatic Stay on the Continuation of ERS Bondholder Protections or, Alternatively, to Enforce the Court’s July 17, 2017 Order* [Dkt. No. 1978] (the “**Opposition**”) filed by the Employees Retirement System (“**ERS**”).

1. On November 28, 2017, certain creditors holding bonds issued by ERS filed *The Puerto Rico Funds’ Motion Conditioning the Automatic Stay on the Continuation of ERS Bondholder Protections or, Alternatively, to Enforce the Court’s July 17, 2017 Order* [Dkt. No. 1866] (the “**Motion**”). In their Motion, the ERS Bondholders argue that the Court should order the continued payment of post-petition interest.

2. On December 12, 2017, the FOMB on behalf of ERS filed its Opposition, pointing out that the ERS bondholders alleged liens in certain funds are adequately protected by the fact that since October 31, 2017, when interest payments stopped, “nothing has diminished the Bondholders’ alleged lien rights in the prepetition and postpetition accounts.” (Opposition at ¶2.)

3. The Retiree Committee joins the FOMB and ERS in opposing the Motion for the reasons stated in the Opposition. In addition, the Retiree Committee notes that when the FOMB filed the Joint Stipulation that is the subject of the Motion with the Court, the Retiree Committee filed a Response and Reservation of Rights [Dkt. No. 803, Ex. A hereto] stating that (a) despite the FOMB’s representation that it would provide the Retiree Committee with a copy of the Joint Stipulation and opportunity to comment on it before it was filed, the FOMB failed to do so, and (b) the Retiree Committee objected to the payment of interest to the ERS bondholders because doing so would not preserve the status quo, but would instead improve the ERS bondholders’

position by among other things paying interest to bondholders that they might not be entitled to receive and in circumstances where their alleged collateral was not diminishing in value.

4. As FOMB asserts in its Opposition, the purpose of adequate protection is to protect the value of the creditor's collateral as of the petition date, not to improve the creditor's position. (See Opposition at ¶¶ 9-10.) Based on ERS's representation that nothing has diminished the value of the deposits in the accounts on which the ERS Bondholders claim a lien and that those accounts are being held pending this Court's ruling on the summary judgment motion, there is no reason to pay the ERS Bondholders' post-petition interest. Preserving the *status quo* does not mean conducting business as usual; it means standing in place. Making interest payments does not preserve the *status quo*, it changes it.

5. Moreover, because the funds held in the accounts are less than the amount owed to the ERS bondholders, the ERS bondholders are under-secured creditors, at best, and not entitled to interest payments. See 48 U.S.C. § 301 incorporating 11 U.S.C. §506(b); *United Savings Assoc. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 382 (1988)). While the ERS bondholders have argued that they continue to enjoy a lien in payments to be made in the future by various government entities to the Commonwealth (and not ERS), if that argument were found to be valid (and it is not), the existence of those future payments itself provides the adequate protection, making the payment of interest today unnecessary to provide adequate protection. Indeed, as the Retiree Committee noted in its previously-filed Reservation, the Court should not allow the payment of interest when there is a real question about the ERS bondholders' entitlement to the same and no adequate means of recouping the funds if they have been paid in error.

WHEREFORE, the Retiree Committee respectfully requests that the court enter an order denying the Motion and granting such other relief as may be just.

December 15, 2017

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By:

/s/ Robert Gordon

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Respectfully submitted,

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